

RACIAL DISPROPORTIONALITY IN THE IOWA CRIMINAL JUSTICE SYSTEM

Out of all 50 states, Iowa consistently ranks within the top 3 states with the worst racial disproportionality records for their criminal justice systems. Although Blacks make up less than 4 percent of the population in Iowa, they constitute 27 percent of the state's prison population. Furthermore, statistics reveal that Blacks are imprisoned in Iowa at a rate that is 13.6 times greater than that for Whites, a disparity that is more than double and nearly triple the national rate of 5 to 1. Indeed, only 5 states—Iowa, Minnesota, New Jersey, Vermont, and Wisconsin—have a disparity that is more than 10 to 1.

These disparities are the results of a number of structural issues with Iowa's civil, educational, and criminal justice systems. For example, Iowa is just one of 20 states that has not passed a statute to prohibit racial profiling. Racial profiling itself is rooted in implicit and explicit racial biases, and it leads to disproportionate police encounters, which, when coupled with police discretion (often racially tinged), results in greater arrests. One can see the damaging results of racial profiling and implicit bias in the ways that police officers exercise their discretion in arrests for drug use. Here, too, Iowa ranks among the worst in the country. First, Iowa has the worst disparities for arrest rates by race. Even though data shows that Blacks and Whites use drugs, including marijuana, at similar rates, Blacks are 8.34 times more likely than Whites to get arrested for marijuana use, compared with the national average where Blacks were 3.7 times more likely than Whites to get arrested for marijuana use despite equal rates of use. With respect to arrests for drug use in general, Iowa holds the second worst record in the nation, with Blacks being 7 times more likely to be arrested for drug use than Whites (despite equal rates of use), compared to the already troubling national rate, where Blacks are 2.5 times more likely than Whites to be arrested for drug use (despite equal rates of drug use).

The effects of the bias in the criminal justice system are compounded at each state. Addressing racial disproportionality in prisons requires more than a focus on policing. It also necessitates a focus on the education system and the school-to-prison pipeline, made easier by the increasing presence of police in public schools, the jury selection process, and more, and it demands attention to collateral consequences of mass incarceration, and disproportionate incarceration at that, for families, particularly the children of the incarcerated.

WORKS REFERENCED

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BAN THE BOX: THE FIGHT FOR ACCESS TO FAIR EMPLOYMENT AND AGAINST WORKPLACE DISCRIMINATION

Related to the disproportionality issue are concerns about employment discrimination related to questions about criminal history, where such history is irrelevant. The research of Harvard sociologist, Professor Devah Pager, reveals the severity of the problem. Pager's research demonstrates not only how difficult getting a job with a criminal record (even for non-violent offenses) can be, but also how much that disadvantage is further heightened by race. In fact, Pager found that race played a large role in discrimination by employers, which meant that black men faced a double whammy or barrier due to both higher incarceration rates and racial discrimination. Employers were more likely to give a callback/interview based on identical submitted resumes to Whites *with* a criminal record than Blacks *without* a criminal record! Specifically, she found that employers were more likely to extend a callback to 17% of the Whites who *had* a criminal record but only 14% of Blacks *without* a criminal record and only 5% of Blacks *with* a criminal record. In explaining her findings, Pager noted that employers (due to their own implicit biases) expect Blacks to have a criminal record. She explicated: "When people think of Black men they think of a criminal. It affects the way Black men are treated in the labor market. In fact, Black testers in our study were likely to be asked up front if they have a criminal record, while whites were rarely asked."

Due to rampant discrimination against those with criminal records by employers, citizens and organizations in states across the country, including Iowa, are seeking to "ban the box," meaning box to be checked about past criminal history, on employment applications. Ban the Box advocates want employers to remove any questions about criminal history from applications for employment, housing, public benefits, insurance, loans and other services. They argue that this use of such questions results in lifelong discrimination and exclusion for those who have already paid their debt to society because of past arrests or conviction records. In 2012, the EEOC reached a settlement with Pepsi Beverages to pay \$3.13 million and provide job offers and training to African-American job applicants because the EEOC ruled that Pepsi's use of background checks discriminated based on race. A number of states have passed legislation to eliminate such questions from employment applications. Advocates in Iowa are seeking the same changes here.

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Director Lee Price, *Racial Discrimination Continues to Play a Part in Hiring Decisions*, Economic Policy Institute: Economic Snapshot, September 17, 2003, at http://www.epi.org/publication/webfeatures_snapshots_archive_09172003/.

U.S. Equal Employment Opportunity Commission, Press Release: Pepsi to Pay \$3.13 Million and Made Major Policy Changes to Resolve EEOC Finding of Nationwide Hiring Discrimination Against African Americans, January 11, 2012, at <https://www.eeoc.gov/eeoc/newsroom/release/1-11-12a.cfm>.

Americans with Disabilities Act (ADA)

The ADA provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. (Title II of ADA, 42 U.S.C. § 12137). In addition, public accommodations must comply with basic nondiscrimination requirements that prohibit exclusion, segregation, and unequal treatment and also must comply with specific requirements related to architectural standards and removal of barriers. (Title III of the ADA). One of the most often cited cases under the ADA is the 1999 U.S. Supreme Court decision in *Olmstead v. L.C.*, where it was held that states must assure that persons with disabilities receive services in the most integrated setting appropriate to their needs.

Under the ADA, there are many issues the Iowa Advisory Board could review and report whether Iowa is meeting the ADA standards in a variety of settings—jails and prisons, employment law, education, managed care and the community integration mandate, and accessibility. For example, Iowa prizes its first in the nation status for its caucuses. However, not all caucus sites are accessible to individuals with physical disabilities, those with hearing issues or those that may require an accommodation such as an interpreter or service animal.

In addition, the *Olmstead* mandate can be used to review whether Iowa's juvenile justice facilities need to move to a more community-based approach versus an institutional or facility based model. Out-of-home placements are disproportionately filled with youth of color and youth with disabilities and the current system as it exists is male-centric. Community-based services lend themselves toward services that can be more tailored to meet the unique needs of the youth and family. This allows for more gender-specific, culturally competent, treatment-based services to be delivered while building upon the strengths of the community/family resources. This topic also could review the intersectionality of civil rights issues in regards to gender, race, and disability.

Summary of Immigration Issues for March 2017 Board Meeting

The U.S. Constitution vests in Congress the power to make immigration and naturalization laws.¹ The Constitution further requires the President to “take Care that the Laws be faithfully executed”² Generally, immigration law is codified in title 8 of the United States Code. On January 25, 2017, President Donald Trump issued two executive orders on border security and interior immigration enforcement³ and public safety.⁴ On February 20, 2017, Department of Homeland Security Secretary John Kelly issued two memos to implement the President’s executive orders.⁵ The aim of the executive orders and memoranda is to effectively reverse most of the immigration policies of President Barack Obama’s Administration.⁶

There are numerous reports of unlawfully present immigrants who are concerned about deportation in light of President Trump’s orders.⁷ The Trump Administration has executed immigration enforcement operations across the country that have resulted in hundreds of arrests.⁸ So far there have been no reports of any such operations in Iowa; however, one of the largest operations in U.S. history occurred at a meat processing facility in Postville, Iowa, in early 2008, which resulted in 389 arrests.⁹

Even preceding the election of President Trump, several cities, counties, and states around the country have enacted policies which prohibit local law enforcement from cooperating or sharing information on the immigration status of individuals with federal immigration officials.¹⁰ These jurisdictions are commonly referred to as “sanctuary jurisdictions.” While some say the term “sanctuary jurisdiction” is politically charged or not clearly defined,¹¹ President Trump’s executive order defines it as a jurisdiction which “willfully refuse[s] to comply with 8 U.S.C. 1373.”¹²

It is estimated that some 300 sanctuary jurisdictions exist today.¹³ In Iowa, there are 23 counties which fall within this category.¹⁴ In addition, the City of Iowa City¹⁵ and the Des Moines School Board¹⁶ have recently passed measures which would limit cooperation with and seek to protect unlawfully present individuals from federal immigration officials.

While this is not a comprehensive list or review of potential immigration-related issues in Iowa, this summary raises a number of potential issues for further discussion, deliberation, and investigation by the Board. What are the implications of these competing immigration enforcement policies for the Rule of Law? What is the status of federal funding to sanctuary entities in Iowa in light of President Trump’s January 25 executive order? What recourse do unlawfully present immigrants have in response to increased enforcement of immigration law?

¹ U.S. Const., art. I, § 8, cl. 4.

² *Id.* at art. II, § 3.

³ <https://www.whitehouse.gov/the-press-office/2017/01/25/executive-order-border-security-and-immigration-enforcement-improvements>

⁴ <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>

⁵ See https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf and

https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf.

⁶ These orders announce the hiring of additional ICE and border patrol agents; expand the list of “priorities” for removal; end the use of prosecutorial discretion to exempt entire categories of people from immigration enforcement (rather than on a case-by-case basis); establish an office to assist victims of crime; require the collection and regular dissemination of immigration data; and expand the 287(g) program to encourage cooperation between federal, state, local, and tribal law enforcement; among other things.

⁷ See, e.g., <http://www.nbcnews.com/news/latino/trump-enforcement-plan-has-immigrants-bracing-raids-deportations-n723771> and <http://learningenglish.voanews.com/a/some-immigrants-in-us-illegally-scared-of-being-deported-to-their-home-country/3729064.html>.

⁸ <http://www.nbcnews.com/news/latino/ice-arrests-stir-fear-immigrants-wary-trump-orders-n719626>

⁹ <http://www.desmoinesregister.com/story/news/2014/07/07/effect-postville-raid-lingers-guatemalan-town/12279567/>

¹⁰ Michael John Garcia and Kate M. Manuel, “State and Local ‘Sanctuary’ Policies Limiting Participation in Immigration Enforcement”, Congressional Research Service, published July 15, 2015, available online at <https://fas.org/sgp/crs/homsec/R43457.pdf>.

¹¹ <http://www.desmoinesregister.com/story/news/2017/02/03/iowa-sheriffs-wait-see-how-executive-order-impacts-sanctuary-city-policy/97102702/>

¹² <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>

¹³ https://www.washingtonpost.com/news/fact-checker/wp/2016/09/07/what-exactly-are-sanctuary-cities-in-immigration-policy/?utm_term=.a4a25442018e

¹⁴ <http://cis.org/Sanctuary-Cities-Map>. The counties include: Allamakee, Benton, Cass, Clinton, Delaware, Dubuque, Franklin, Freemont, Greene, Ida, Iowa, Jefferson, Johnson, Linn, Marion, Monona, Montgomery, Polk, Pottawattamie, Sioux, Story, Wapello, and Winneshiek County.

¹⁵ <http://www.press-citizen.com/story/news/local/2017/01/25/trumps-sanctuary-city-order-affect-iowa-city/97065026/>

¹⁶ <http://www.desmoinesregister.com/story/news/education/2017/02/07/sanctuary-schools-could-coming-des-moines/97597700/>

Voter Issues

I think our committee should study the impact of voter ID laws because voter fraud in Iowa is almost nonexistent. I fear this bill will lead to voter suppression. It seems that the Iowa Secretary of State, Paul D Pate, has repeatedly tried to undermine the Voting Rights Act.

[Des Moines Register article](#) Feb 8 2017

"House Study Bill 93, labeled the "Election Integrity Act," calls for establishing electronic poll books in every Iowa precinct. In addition, the bill calls for establishing a voter ID system with signature verification, absentee ballot verification and post-election audits."

"The American Civil Liberties Union of Iowa has vowed to fight Pate's bill, calling it a solution in search of a problem."

[Quad City Times Op Ed](#): Jan 8 2017

It is a fact that Minority voters are less likely to vote in states with voter ID laws. Public transportation is somewhere between lackluster and nonexistent in most of Iowa. Access to motor vehicle offices and county clerks is a nationwide problem that, in part, explains the suppressive effect these voter ID laws have on targeted communities.